

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

HARRISON D. WILLIAMSON, JR.,

Petitioner,

vs.

Case No. 3:08cv047

WARDEN, LEBANON CORRECTIONAL
INSTITUTION,

JUDGE WALTER HERBERT RICE

Respondent.

DECISION AND ENTRY ADOPTING SUBSTITUTED REPORT AND
RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE
(DOC. #17) ON RESPONDENT'S MOTION TO DISMISS (DOC. #8);
PETITIONER'S RESPONSE/MOTION TO DISMISS PETITION WITHOUT
PREJUDICE (DOC. #19) CONSIDERED IN AFORESAID RULING AND IS
OVERRULED; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT
AND AGAINST PETITIONER HEREIN, DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS WITH PREJUDICE; CERTIFICATE OF
APPEALABILITY AND ANTICIPATED REQUEST FOR LEAVE TO
APPEAL *IN FORMA PAUPERIS* DENIED; TERMINATION ENTRY

Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge, in his Substituted Report and Recommendations (Doc. #17) on Respondent's Motion to Dismiss (Doc. #8), and that set forth in the Respondent's Response (Doc. #20) to Petitioner's Motion to Dismiss Petition Without Prejudice (Doc. #19), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court adopts said Substituted Report and

Recommendations in their entirety, thus ordering judgment in favor of Respondent and against Petitioner herein, dismissing the Petition for Writ of Habeas Corpus with prejudice.

In ruling as aforesaid, this Court makes the following, non-exclusive observations:

1. By filing the Substituted Report and Recommendations, this Court deems that judicial officer's Initial Report and Recommendations (Doc. #11) to have been superseded, along with this Court's request, set forth in its Decision and Entry adopting same in part and not ruling upon in part (Doc. #18), which directed the Magistrate Judge to file a Supplemental Report and Recommendations addressing the legal effect, if any, of the Petitioner's attempts, albeit rebuffed, to appeal the decision of the Second District Court of Appeals to the Supreme Court, insofar as they may impact upon a procedural default analysis. Id. at 2.

2. Although the Magistrate Judge filed his Substituted Report and Recommendations on July 15, 2008, recommending that grounds one and two be found procedurally defaulted, two days prior to the deadline previously granted Petitioner to file a response to Respondent's claim that grounds one and two for relief are so defaulted (Doc. #13), this Court has reviewed the Petitioner's July 28, 2008, Response (Doc. #19), and has taken same into account in this decision, along with the Respondent's Response to the Petitioner's filing (Doc. #20).

3. Considering the entirety of this Court's file, this Court is satisfied, at this time, that grounds one and two are procedurally defaulted as well.

4. Petitioner's Motion to Dismiss Petition Without Prejudice (Doc. #19) is overruled, based upon reasoning and citations of authority set forth in Respondent's Response (Doc. #20) to same.

WHEREFORE, based upon the aforesaid, this Court, having adopted the Substituted Report and Recommendations of the United States Magistrate Judge (Doc. #17) on Respondent's Motion to Dismiss (Doc. #8), orders the entry of judgment in favor of Respondent and against Petitioner, dismissing the Petition for Writ of Habeas Corpus with prejudice. Given that reasonable jurists would not disagree with this conclusion, the Court will deny the Petitioner a Certificate of Appealability and, further, given that any appeal from this Court's decision, while subjectively not frivolous, would be objectively so, this Court denies an anticipated request for leave to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

September 30, 2008

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

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